

DECISION



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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-214111.2

DATE: December 17, 1984

MATTER OF: Dynamic Science, Inc.--Reconsideration

DIGEST:

GAO will deny a request for reconsideration of a protest decision based upon a Memorandum Order of a United States District Court in a different case when the facts of the cases are distinguishable. Further, since the court's order is preliminary, it would not provide a basis for reconsideration.

Dynamic Science, Inc. requests reconsideration of our decision, Dynamic Science, Inc., B-214111, Oct. 12, 1984, 84-2 C.P.D. ¶ 402. In that decision, we denied Dynamic Science's protest against the award of a cost-plus-fixed-fee contract to Rail Company under request for proposals No. N00019-83-R-0001, issued by the Naval Air Systems Command. We deny the request for reconsideration.

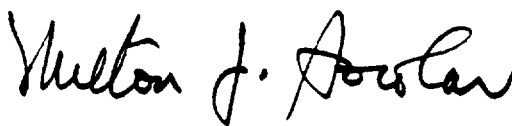
Dynamic Science bases its request upon a Memorandum Order issued by the United States District Court for the District of Columbia in CACI, Inc. v. United States (Civil Action No. 84-2971, October 16, 1984). Dynamic Science states that it became aware of the order after reading the November 5, 1984, issue of Federal Contracts Report, Vol. 42, No. 18. The firm contends that the order, in which the court initially found that there was no rational basis for a cost realism analysis by the Navy, applies directly to its protest.

We disagree. First, although both involved cost realism analyses, the facts in the two cases are distinguishable. In CACI, after conducting a cost realism analysis, the agency significantly increased the costs of one offeror (the plaintiff), as reflected in its best and final offer, and at the same time, decreased the costs of its competitor. It then made an award to the latter as the lowest evaluated offeror. The result was that the actual contract price, based on the best and final, was approximately \$920,000 more than what the agency realistically expected performance to cost.

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The court in CACI appeared to be objecting, among other things, to the discrepancy between the evaluated cost and the higher contract value. In Dynamic Science, by contrast, although the agency, in its cost realism analysis, increased the protester's costs, it did not lower--and in fact did not change--the proposed costs of the awardee, so that the evaluated cost and the contract value were the same. We therefore do not believe that the court's findings are applicable to Dynamic Science.

Second, the court order granting CACI's motion for a preliminary injunction is an interlocutory decision, not a final one.^{1/} For this reason, it would not in any case provide a basis for reconsideration.

for 
Comptroller General
of the United States

^{1/} In its order, the court requested an advisory opinion from our Office, which we provided in CACI, Inc.--Federal, B-216516, Nov. 19, 1984, 64 Comp. Gen. ____, 84-2 C.P.D. ¶ ____, sustaining the protest on other grounds. The court has not yet issued a final decision.